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SUBJECT: NEPALI INTERIM CONSTITUTION STILL HAS GAPS

Classified By: Ambassador James F. Moriarty. Reasons 1.4 (b/d).

Summary -----

¶1. (C) The committee of party and Maoist-affiliated representatives tasked with preparing an interim constitution for Nepal presented its draft to the Government and Maoist peace negotiating teams on August 25. The Interim Constitution Drafting Committee (ICDC) took a little more than two months to produce a 76-page draft. The final document has a number of gaps but it does contain significant language, including a referral of the issue of the monarchy to a referendum, and important provisions regarding the interim parliament, the interim executive, the Nepal Army, the Maoist People's Liberation Army, the constituent assembly and local governance. End Summary

Draft Interim Constitution Presented -----

¶2. (C) On August 25, after approximately two months of work, the Interim Constitution Drafting Committee presented a 76-page, 172-article-long draft to the Government and Maoist peace negotiating teams. The ICDC's 16 members, who were largely lawyers and men (there were four women), were affiliated with either the Seven-Party Alliance (SPA) or the Maoists. The Committee's chairman was a former Supreme Court Justice. The committee was established pursuant to the fourth point of the June 16, 2006, 8-Point Agreement between the SPA and the Maoists. Its mandate was quite broad. According to the 8-Point Agreement, the drafters were to base the interim constitution on two prior agreements: the 12-Point SPA-Maoist Understanding of November 2005 (the Indian-brokered agreement that led the way to SPA-Maoist cooperation during the April 2006 people's movement against the King), and the Government-Maoist Code of Conduct from late May 2006 (the so-called 25-Point Agreement).

Agreement In Spite of Differences -----

¶3. (C) Because of the Parties' and the Maoists' difficulties first in agreeing on the committee's composition as well as their subsequent differences on the substance of the draft, the Government kept extending the committee's life. Perhaps

the most highly publicized issue concerned a continuing role for the monarchy. Prime Minister Koirala faced strong criticism from all the other party leaders, and some members of his own Nepali Congress party, for saying in early August that "space" should be allowed for the King. The week of August 21, amid reports of continuing deadlock in the committee, the Prime Minister called into question the absolute necessity of an interim constitution. The news that the members had actually reached agreement after 68 days was a major news story on the 25th of August.

Key Provisions

14. (C) According to initial analyses and partial translation of the draft text, the interim constitution appears to provide the following:

--- The King: The future of the monarchy will be decided by a referendum which will be held at the same time as the Constituent Assembly elections. In the event the monarchy is abolished, the chair of the Interim Parliament will function as the President before the Constituent Assembly elections.

-- The Interim Parliament: Its membership is to be decided through political consensus immediately upon implementation of the interim constitution. The Interim Parliament's term will end after the first meeting of the Constituent Assembly.

-- The Interim Executive: All executive powers are to be vested in the Council of Ministers. That person who commands a majority in the interim parliament shall be elected Prime Minister. The PM shall appoint deputy and other ministers as required upon the recommendation of the concerned parties. Ministers need not be members of the interim parliament. The Council of Ministers shall be collectively responsible to the interim parliament.

-- The Nepal Army/People's Liberation Army: The Council of Ministers shall appoint the Chief of Staff of the Nepal Army. The Council of Ministers shall control, use and mobilize the Nepal Army; the responsible committee of the interim parliament must endorse mobilization within 30 days. The Nepal Army and the (Maoist) People's Liberation Army (PLA) shall be confined in cantonments until the Constituent Assembly elections. A high-level army commission shall control the mobilization of both armies with the commissioners appointed by consensus between the Seven-Party Alliance and the Maoists. After the elections, both armies shall be under the interim parliament and the interim executive. The Prime Minister shall be the supreme commander of both. Militia shall be formed to maintain security during the period governed by the interim constitution. After the constituent assembly elections, both armies shall be integrated into one national army.

-- The Constituent Assembly: The assembly shall be a representative body elected through a system of one person-one vote. It shall have a term of two years from its first meeting with an additional six months in the event there is a state of emergency. Its first meeting shall be called on the 21st day after the election commission publishes the final election results. The constituent assembly will vote on the preamble and each article of the new constitution. Voting shall be on consensus with a quorum being two-thirds of the representatives.

-- Local Governance: The country shall have a federal structure and be divided into nine autonomous provinces based on ethnicity. Interim governments in each shall be formed with the consensus of the SPA and the Maoists.

Comment: Many Open Questions

15. (C) Despite the interim constitution's 170-plus provisions, it still leaves many issues unresolved. Membership of the interim parliament and the awkward and

seemingly contradictory language on control of the Nepal Army and the PLA are but two such questions. Controversial -- largely Maoist-driven -- provisions regarding division of Nepal into nine autonomous regions (under which the capital Kathmandu would fall into a new Newar province) are bracketed in the constitution's text. The Government and Maoist negotiating teams could easily make considerable changes in that language as well as other articles. While we welcome continued progress in the peace process, we fear that in the area of the interim constitution, as in other areas of the peace process, the Government may concede too much too soon. The interim constitution's tolerance of a strong ongoing role for the PLA is not reassuring. We also fear that the Maoists will use the drafting of the interim constitution to push for rapid movement towards an interim government, including themselves and their weapons. Prime Minister Koirala will need to exercise a firm hand as the drafting of the interim constitution moves into its final stages.

MORIARTY